IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 390 OF 1995

The State of Maharashtra ...Appellant

Versus

1. Bharat Ramchandra Rane,
Aged 27 years, R/o. Pawashi,
Ta. Kudal, Dist. Sindhudurg.

2. Ramchandra Shankar Rane,
Age 65 years,

3. Sitabai Ramchandra Rane,
Age 60 years,

4. Shashikant Ramchandra Rane,
Age 23 years,

5. Shobha Ramchandra Rane,
Age 20 years,

Nos. 2 to 5 are resident of
Halwal, Tq. Kankavli, ...Respondents
District Sindhudurg (Ori. accused)

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Shri. A.S. Shitole, A.P.P. for Appellant.

None for respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 28TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. the State of Maharashtra challenges the judgment and

order dated 1.12.1993 passed by the learned Additional Sessions Judge Sindhudurg in Sessions Case No.30 of 1987. By the said judgment and order, the learned Sessions Judge acquitted the respondents i.e. original accused Nos. 1 to 5 of the offence under Sections 304-B, 306, 498-A, r.w. 34 of I.P.C.

2. Briefly stated the prosecution case is as under:-

. That deceased Ranjana was the daughter of Sadashiv Tawade. The complainant P.W.4 Shivaji Tawade was the brother of Ranjana. Ranjana was married to accused No.1 Bharat Ramchandra Rane on 15.6.1986. Accused No.2 is the father of Bharat Rane. Accused No.3 Sitabai is the mother of Bharat Rane. Accused No.4 Shashikant Rane and accused No.5 Shobha Rane are the brother and sister of Bharat Rane respectively. Ranjana died on 26.12.1986. It is the prosecution case that prior to the marriage as well as during the marriage and after the marriage, a demand was made by the accused persons i.e. accused Nos. 1 and 2. On account of the said demand, Ranjana was subjected to cruelty, harassment and ill-treatment by all accused persons in respect of demand of gold, cash etc. made by the accused Nos. 1 and 2. It is

further the prosecution case that on account of the said ill-treatment and cruelty, Ranjana committed suicide on 26.12.86 in the room of her husband at Sawantwadi. Her brother P.W.4 Shivaji lodged the complaint against all the accused persons. After completion of investigation charge sheet came to be filed.

3. In due course the case was committed to the Court of Sessions. Charge came to be framed against all the accused persons under sections 304-A, 306, 498-A r.w. 34 of I.P.C. All the accused pleaded not guilty to the said charges and claimed to be tried. Their defence is that of total denial.

4. During the trial, the prosecution has examined in all nine witnesses. Three material witnesses are P.W.4 Shivaji Tawade, P.W.5 Shubhada Tawade and P.W.6 Dilip Tawade. P.Ws.4 and 6 are the brothers of deceased Ranjana and P.W.5 Shubhada was the wife of P.W.4 Shivaji, thus she was the sister-in-law of deceased Ranjana. After going through the evidence adduced by the prosecution, the learned Sessions Judge acquitted all the accused persons of the offences charged. Hence, this appeal.

5. I have heard Shri. Shitole, the learned A.P.P.

for the State. None appears for the accused persons. I have perused the entire record pertaining to the present case. After going through the said record, I am of the opinion that this appeal deserves to be dismissed.

6. It is the prosecution case that Ranjana committed suicide. The body of Ranjana was referred for post mortem and the cause of death is given as shock due to partial hanging and 100% burns. At the time of incident, Ranjana was living alone with her husband Bharat in a room at Sawantwadi. All other accused were not living with them and they were living separately in their village at Halwal, Tq. Kankavali. Ligature mark was found on the neck and there was 100% burns over the body of Ranjana. According to Doctor, all injuries were ante mortem. Ranjana could not have tried to commit suicide by hanging herself from the beam of the roof as no table, chair, stool or ladder etc. was found below the spot where Ranjana was supposed to have hung herself. It has come in the evidence of P.W.9 P.S.I. Khairnar that without the help of any article to climb Ranjana could not have hung herself from the beam of the roof where some part of the ligature was found. It has come on record that the roof is about 12’ high hence, possibility that Ranjana might have hung herself

without taking help of any table, chair or stool does not appear at all probable. Clothes of Ranjana and burnt pieces of clothes were smelling of kerosene. One plastic can containing kerosene was found near bathroom. The plastic can was closed and intact. Its cork was fixed and was not removed. The cause of death of Ranjana is shock due to partial hanging and 100% burns. If Ranjana had hung herself and she has sustained shock due to act of hanging she would not have been in a position to find a can of kerosene, pour it on her person and then close the can, fix its cork properly and place it neatly near the bathroom. Considering the state of shock under which Ranjana would have been even according to the doctor she would not be not able to do all these actions. Thus the reasoning arrived at by the learned Sessions Judge that Ranjana has not committed suicide appears to be a possible view.

7. At the relevant time Ranjana was residing alone with her husband at Sawantwadi. It has come on record that her husband Bharat who is a police constable was on duty alongwith other constables in the building of Pancham Khemraj College. Deceased Ranjana had come with tiffin for her husband at 6.30 p.m. on 25.12.86 at the said college. Deceased Ranjana met one Anusaya Haldankar in the

evening of 25.12.86 in the Bazar. So also one Vasant Hande had been to the house of Bharat and Ranjana on 25.12.86. The evidence on record shows that in the evening prior to the incident the mental condition of Ranjana was normal and she was not in a disturbed state of mind. Admittedly, there is only one stair case available for going up on the terrace of building of Pancham Khemraj College where appellant Bharat who was a constable was on duty as a Guard in the said college. It has also come on record that the outside gate for entering into the college was locked till 8.00 a.m. from the outside by the peon of the said college. It appears that accused Bharat was on duty at Pancham Khemraj college from the evening of 25.12.86 to morning of 26.12.86 and he did not go to his room or near the police headquarters in the night of 25.12.86. In such case the possibility of accused No.1 coming to his room from his duty in the night of 25.12.86 and committing murder of his wife and going back is almost nil. From the circumstances, which are on record, it is difficult to infer that Ranjana died as a result of suicidal death. Looking to the evidence on record the conclusion of the learned Sessions Judge,that the possibility that some unknown third person might have committed the murder of deceased Ranjana cannot be ruled out can be said to be a reasonable

and possible view. Looking to the evidence on record, it cannot be said that the prosecution has proved its case under section 306 or 304-B of I.P.C.

8. The accused was also facing a charge under Section 498-A of I.P.C. It is the prosecution case that before the marriage, during marriage and even after the marriage, there was a demand from the accused Nos. 1 and 2 for cash, gold etc. and on account of the said demand the accused persons harassed the deceased and treated her with cruelty. It is the prosecution case that a meeting was held prior to the marriage and in the said meeting the accused No.2 Ramchandra Rane demanded two tolas of gold, cash of Rs.2,000/-, gold ring and he had asked them to bear the expenses of marriage for both sides. P.W.6 Dilip Tawade-brother of Ranjana has deposed on this aspect. He has further stated that his father Sadashiv Tawade requested the accused No.2 Ramchandra Rane that they should bear half of the expenses for the marriage. Dilip Tawade has further deposed that the meeting was held at his house prior to the marriage and in the said meeting the accused No.1 Bharat, accused No.2 Ramchandra, Sadashiv Tawade, P.W.4 Shivaji Tawade and P.W.5 Shubhda Tawade wife of Shivaji Tawade were present. However, the testimony of P.W.4

Shivaji who is the complainant in the present case is totally silent on the point of the said meeting. Moreover, P.W.4 Shivaji Tawade states that he did not have any personal knowledge about the terms settled in the meeting in respect of the marriage. P.W.4 Shivaji does not claim that he came to Sawantwadi to attend the meeting, however, he claims that he came to know about the settlement of marriage when his father Sadashiv came to Kudal to inform him about the marriage. P.W.6 Dilip Tawade has further stated that P.W.5 Shubhada was present in the meeting. However, the evidence of Shubhada is silent on the point that any such meeting was ever held prior to the marriage and that she had attended the same. As per the evidence of Shubhada a demand was made during the marriage itself. Hence, the version of P.W.6 Dilip Tawade, about the meeting which was held prior to the marriage in which demand was made by accused Nos. 1 and 2 is totally negatived by P.W.4 Shivaji Tawade and P.W.5 Shubhada Tawade. Moreover, Dilip Tawade does not remember the date or even the month when the meeting was supposed to have been held at his residence. In such case, the version of P.W.6 Dilip Tawade in respect of the meeting prior to the marriage and the demand made therein does not appear to be reliable.

9. It is further the prosecution case that a demand was made by accused Nos. 1 and 2 of Rs.2,000/-, two tolas gold and a gold ring during the marriage. P.W.5 Shubhada has no personal knowledge about the demand made by accused Nos. 1 and 2 so also P.W.4 Shivaji has no personal knowledge about the fact. P.W.4 Shivaji has further deposed that the marriage took place in their house at Halwal in happy and friendly atmosphere. This circumstance is brought on record through the evidence of P.W.4 Shivaji. From his evidence it appears that no such demand was made by the accused persons in the marriage, otherwise it would have come on record that marriage was celebrated in a tense atmosphere. Moreover, the circumstance that the deceased Ranjana resided happily for a period of two months after the marriage with all the accused persons also shows that there was no demand made during the marriage. It has also come on record that Sadashiv Tawade i.e. father of Ranjana has offered out of his own desire an amount of Rs.1000/- in cash towards dress material for the bridegroom, one gold ring of five gms and gold of 12 gms to his daughter at the time of marriage. It was out of his own free will that Sadashiv Tawade offered those articles to his daughter and son-in-law at the time of marriage. Hence, the prosecution failed to establish that the

accused Nos. 1 to 3 had demanded Rs.2,000/-, a gold ring and two tolas gold on the date of the marriage.

10. It is further the prosecution case that the demand of gold ring and a gold locket of two tolas was made by accused No.1 Bharat to the deceased. As per the prosecution case the deceased had told her sister-in-law P.W.5 Shubhada during her visit to Kudal that her husband Bharat had demanded gold locket of two tolas from her father. Deceased told her husband that the financial condition of her brother was not sound hence they could not meet the demand and she also told Bharat to make the demand directly to her father. However, the testimony of the brothers of deceased i.e. P.W.6 Dilip Tawade and P.W.4 Shivaji Tawade who is also the husband of Shubhada is totally silent on this point. P.W.5 Shubhada claims that she informed her husband P.W.4 Shivaji and her brother-in-law P.W.6 Dilip about the facts narrated to her by Ranjana, however, neither P.W.4 Shivaji nor P.W.6 Dilip claim in their evidence that Shubhada had told them about the demand made by accused No.1. So also both these witnesses who are brothers of deceased Ranjana did not claim that Ranjana had informed them at any time about this demand made by her husband Bharat to her. Thus, the evidence of

Shubhada on the point of demand for gold locket by accused No.1 appears to be unreliable.

11. Now I shall deal with the point of cruelty, harassment and ill-treatment by the accused persons to deceased Ranjana. In the discussion above, I have already observed that the prosecution failed to establish that any demand was made by any of the accused. In respect of the offence under Section 498-A of I.P.C., the prosecution has relied on the letters Exh. 90 and 91 alleged to have been written by deceased Ranjana to her father Sadashiv. However, these letters cannot be relied upon because the prosecution has failed to prove that the handwriting on the said letters is that of Ranjana.

12. After her marriage Ranjana for the first time visited her parental house in the middle of August, 1986, however, none of the three material witnesses in the present case i.e. P.W.4 Shivaji, P.W.5 Shubhada and P.W.6 Dilip has stated that Ranjana had complained of ill-treatment, harassment by the accused persons at that time.

13. Now coming to the second visit of Ranjana which was some time after Ganpati Festival in 1986, P.W.5 Shubhada claimed that during the said visit,

Ranjana told her that her husband assaulted and abused her. However, P.W.5 Shubhada did not state in her statement before the police that Ranjana informed her that she was being subjected to cruelty, harassment and ill-treatment at the hands of accused Nos. 1 to 5, during her visit after Ganpati festival of 1986. The testimony of P.W.6 Dilip is also totally silent on the point that Ranjana had complained of cruelty, harassment and ill-treatment during her visit after Ganpati festival of 1986. The evidence of complainant P.W.4 Shivaji who is the husband of Shubhada is also totally silent on this point. Had Ranjana disclosed any such thing to Shubhada, Shubhada would have certainly informed her husband about this fact. Natural conduct of Shubhada would have been to inform P.W.4 Shivaji her husband what his sister Ranjana had told her. However, as stated earlier the evidence of P.W.4 Shivaji is silent on this point. In such circumstance, it is difficult to rely on the evidence of P.W.5 Shubhada.

14. Now I shall deal with the third visit of deceased Ranjana. It is the prosecution case that as Ranjana was driven out of her house, she went to her uncle Vithoba Tawade and son of Vithoba Tawade had brought Ranjana to the house of P.W.4 Shivaji Tawade in the month of November 1986. However,

P.W.7 Vithoba Tawade does not claim that Ranjana had informed him that she was driven out of the house by the accused persons. It is pertinent to note that P.W.7 Vithoba Tawade is the real uncle of deceased Ranjana. He was the first person who was available for Ranjana to narrate the facts. Moreover, Vithoba Tawade was an elderly person in the family and he being the real paternal uncle of Ranjana, in the natural course of events, Ranjana would have narrated these facts to him. Moreover, during the third visit in November, 1986, Ranjana came to the house of her brother P.W.4 Shivaji Tawade. P.W.5 Shubhada claims that Ranjana had come to her house alongwith clothes and one suitcase. Ranjana informed her that her husband Bharat had beaten her, therefore, she had pain in the stomach and back and she was admitted in the civil hospital at Kankavali. Ranjana further informed Shubhada that accused Nos. 2 to 5 had driven her out of house alongwith clothes and suitcase. Ranjana further informed that accused No.4 Shashikant has snatched her Mangalsutra. Ranjana also told Shubhada that she was not given meals by accused No.3 and that accused No.5 used to ask her to do heavy work. At the outset it may be stated here that there is absolutely no evidence on record to support the version of P.W.5 Shubhada that Ranjana had been to the Government Hospital at

Kankavali for medical treatment. P.W.9 P.S.I. Khairnar has stated that he had deputed one head constable to collect the evidence from the Primary Health Centre Kankavli in order to ascertain whether Ranjana had taken treatment from the said hospital. However, P.W.9 P.S.I. Khairnar had admitted that nothing was found on the record of Primary Health Centre at Kankavali. Moreover, this is discrepancy in the version of P.W.5 Shubhada and her husband P.W.4 Shivaji on the aspect of cruelty. It is pertinent to note that P.W.5 Shubhada has clearly admitted in her cross examination that whenever Ranjana was brought to their house she was only brought for "Maherpan". Moreover, in respect of this incident Ranjana had not even narrated the facts to her own brother P.W.4 Shivaji Tawade when she reached his house, at that time Shubhada was not at home and only after Shubhada came back, thereafter, Ranjana narrated the facts only to Shubhada. It would have been normal and natural conduct for Ranjana to narrate these facts to her brother who was at home but she did not do so and the facts were revealed only after Shubhada arrived.

15. P.W.6 Dilip Tawade has stated that the accused No.1 Bharat was insisting that deceased Ranjana should sign the papers and give him consent for

performing second marriage, however, this fact have not been disclosed either in the evidence of P.W.4 Shivaji or in the complaint (Exh.36) or in the evidence of P.W.5 Shubhada. Thus, I do not find it safe to rely on uncorroborated testimony of P.W.6 Dilip on this point.

16. P.W.7 Vithoba Tawade has stated that accused Nos. 1 to 5 continued to ill-treat Ranjana and Ranjana came to his house weeping. She demanded money from him to proceed to Sawantwadi. At that time, accused No.1 Bharat followed her to his house and took Ranjana to his house by dragging her and accused No.1 gave two slaps to Ranjana in his presence at his residence. It is pertinent to note that P.W.7 Vithoba Tawade did not inform this incident to the brother or father of Ranjana, nor any of these witnesses have stated that Ranjana or Vithoba had any time informed them about this incident. It is pertinent to note that P.W.7 Vithoba Tawade has not stated in his statement that the deceased Ranjana came weeping to his house and demanded money. In such case the evidence of P.W.7 Vithoba Tawade cannot be relied upon.

17. It is further the prosecution case that at the last minute the accused persons stated that the venue of marriage be changed from Kankavali to

Halwal. As per the prosecution case it was agreed in the meeting held prior to the marriage that the marriage was to be solemnised at Datta Mandir Ashiyana Hall, Kankavali. P.W.4 Shivaji has deposed that at the eleventh hour, accused No.2 Ramchandra told them not to solemnise the marriage at Ashiyana Hall, Kankavali and the marriage should be performed at Halwal. The reason assigned for changing the venue by P.W.6 Dilip is that because they could not meet the demand of accused persons and therefore, the accused persons deliberately and intentionally insisted that the venue of the marriage be changed from Kankavali to Halwal. However, P.W.7 Vithoba Tawade does not know the reason why the venue was changed. In the natural course of events P.W.7 Vithoba Tawade would have asked his brother Sadashiv as to why the venue was changed when it was agreed that the marriage was to be performed at Kankavali. So also P.W.5 Shubhada was unable to state reason why the venue was suddenly changed. It has come on record that P.W.4 Shivaji and his family members had reached at Halwal one day prior to the marriage, now if the marriage was to take place at Kankavali as agreed by them, there was no occasion for Shivaji and his family to reach Halwal one day prior to the marriage, P.W.4 Shivaji and his family would have gone straightway to Kankavali for attending the

marriage. The prosecution has failed to bring on record the invitation cards of the marriage to show that the marriage was to be performed at Kankawali. So also nothing is brought on record that really the hall was booked at Kankavali for marriage. Admittedly, the accused persons and family of Ranjana i.e. Tawade family have residential houses at Halwal. Sadashiv Tawade and P.W.6 Dilip Tawade resided jointly at village Halwal. The marriage was performed in the house of Tawade family at Halwal. Thus, when both the families are from the same village then there is no occasion to solemnise the marriage at third place like Kankavali. This leads to the inference that the marriage was to be celebrated from the beginning at Halwal only and not at Kankavali.

18. One other circumstance has been alleged against the accused persons by P.W.6 Dilip Tawade and P.W.8 Surekha Tawade. P.W.6 Dilip has stated that one morning he found Ranjana lying in front of rear side door of his house in semi unconscious condition and she was murmuring that accused No.1 administered poison to her. Ranjana was then admitted to Cottage Hospital Sawantwadi. She was as indoor patient in the said hospital for three to four days. However, P.W.9 P.S.I. Khairnar who is the investigating Officer has admitted in his cross

examination that he made enquiry with the Cottage hospital and asked for the record regarding admission of Ranjana in the said Hospital on account of administration of poison. P.W.9 P.S.I. Khairnar had admitted that he could not find any such record. No other witness has deposed on this aspect. The evidence of P.W.4 Shivaji who is the brother of Ranjana is totally silent on this aspect. Thus this circumstance also appears to be doubtful.

19. The next circumstance alleged against the accused No.1 is that he asked Ranjana not to visit the house of her brother Dilip at Sawantwadi. However, P.W.6 Dilip has not stated this fact in his statement recorded by the police. Hence, there is material omission in his evidence. Same is the case with the evidence of P.W.8 Surekha. Hence, this circumstance also appears to be doubtful and thus it cannot be taken into account.

20. In view of the discussion above, I am of the opinion that the learned Sessions Judge has rightly come to the conclusion that the prosecution failed to establish the ingredients of section 498-A of I.P.C. I have already observed earlier that it does not appear to be a case of suicide hence, no case can be said to be made out under Section 304-B

or 306 of I.P.C. The view taken by the learned Sessions Judge is a reasonable and a possible view. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view would not be a ground to interfere.

21. In the circumstance, I find no merit in this appeal and the same is dismissed.